

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.730 OF 2014

WITH

CIVIL APPLICATION NO.346 OF 2014

IN

CIVIL REVISION APPLICATION NO.730 OF 2014

Life Insurance Corporation of India ... Applicant

 v/s

Shri Digvijaysingh Gangasingh and others ... Respondents

Mr Ajay Khaire with Mr Ranjith Ramesh i/b Lex Services for Applicant.

Mr Zubin Behram Kamdin with Ms Jennifer Michael i/b M/s Wadia Ghandy and Co. for Respondents.

CORAM : B.P. COLABAWALLA, J.

DATE : JUNE 29, 2017

JUDGMENT :

1. This Civil Revision Application filed under section 115 of the Civil Procedure Code, 1908 (for short the “**CPC**”) takes exception to the judgment and order dated 2nd May, 2009 passed by the Appellate Bench of the Small Causes Court at Bombay in Appeal No.70 of 2007. By this judgment and order, the order passed by the Trial Court decreeing the suit in favour of the Plaintiff landlord was

confirmed and the Appeal was dismissed.

2. The brief facts giving rise to the present controversy are that the Applicant herein (the Defendant before the Trial Court) is a statutory Corporation formed and established under the Life Insurance Corporation Act, 1956. It is wholly owned by the Central Government. The Respondents are all trustees of *Shri Lalsingh Mansingh Trust* (for short, the **“said Trust”**) which is the owner of office premises admeasuring 4551.68 sq.ft. on the 3rd Floor, Above Block C and D of the building known as Harganga Mahal Estate situated at Khodadad Circle, Dadar, Mumbai 400 014 (hereinafter referred to as the **“suit premises”**).

3. The Defendant had leased the suit premises from the said Trust for a period of five years commencing from 10th October, 1970 at a monthly rent of Rs.2,625.70. The registered lease deed dated 15th September, 1971 was accordingly executed between the parties. On behalf of the Trust the lease deed was executed by Gangasingh Motisingh as a trustee of the said Trust. This lease deed expired by the efflux of time on 10th October, 1974.

4. Despite this, the Defendant continued in occupation,

possession and enjoyment of the suit premises and according to it, the same was occupied as a lawful tenant and the rent was accepted by the Respondents even after the expiry of the lease deed. It is therefore the case of the Defendant that after the expiry of the lease deed and since the landlord Trust accepted rent even thereafter, it had become a monthly tenant of the said Trust.

5. Be that as it may, after a period of about 25 years, a notice dated 30th March, 2001 was issued on behalf of three trustees of the said Trust terminating the tenancy of the Defendant and asking them to handover peaceful possession of the suit premises within the expiry of one month from the date of the notice. According to the Defendant, even though there were four trustees, the termination notice was issued only on behalf of three trustees viz. Gangasingh Motisingh, Digvijaysingh Gangasingh and Ishwarsingh Gangasingh. Even though there was a fourth trustee viz. Kishoresingh Gangasingh, the termination notice was not issued on behalf of the fourth trustee. In these circumstances, it is contended before me that the termination notice is bad and consequently, so is the suit filed by the landlord as there is no valid termination of the tenancy of the Defendant.

6. Be that as it may, the Defendant replied to the termination notice vide its reply dated 30th April, 2001 inter alia contending that the tenancy of the Defendant was protected under the provisions of the Maharashtra Rent Control Act, 1999 and therefore, refused to vacate the suit premises. What is important to note over here is that in this reply, the Defendant never raised any contention that the termination notice was defective since it was not issued on behalf of all the trustees.

7. Since the termination notice was not complied with, all the four trustees of the said Trust namely, Gangasingh Motisingh, Digvijaysingh Gangasingh, Kishoresingh Gangasingh and Ishwarsingh Gangasingh filed a suit being T.E. & R. Suit No.553/584 of 2001 in the Court of Small Causes at Bombay against the Defendant for possession of the suit premises alongwith mesne profits. This suit was contested by the Defendant by filing its written statement. In the written statement, one of the contentions raised was that the suit was not maintainable on the ground that the termination notice / notice to quit was not correct and proper and does not validly terminate the tenancy of the Defendant.

8. Thereafter, on the pleadings of the parties, the Trial

Court framed five issues which read as under :-

Sr.No.	Issues	Findings
1	Whether the suit in the present form before this Court is maintainable ?	Yes
2	If yes, whether the plaintiffs prove that the defendants' tenancy is legally terminated ?	Yes
3	Whether the defendants prove that the notice of termination is illegal ?	No
4	Are the plaintiffs entitled for decree for possession and mesne profit ?	entitled for possession. Separate inquiry be made for mesne profits u/o 20 R.12 of the C.P.C.
5	What order and decree ?	As per final order.

9. On these issues, parties led their respective evidence and ultimately the Trial Court by its judgment and order dated 14th November, 2006 decreed the suit in favour of the Plaintiffs and held that they were entitled to recover possession of the suit premises as well as mesne profits.

10. Being aggrieved by the decision of the Trial Court, the Defendant preferred an Appeal before the Appellate Bench of the Small Causes Court, Bombay being Appeal No.70 of 2007. While the Appeal was pending, the Defendants called upon the Plaintiffs to take

over possession of the suit premises but since the Plaintiffs insisted that they would take over possession only in the event the Appeal filed by the Defendants was withdrawn, possession of the suit premises was not handed over during the pendency of the Appeal. It is common ground before me that thereafter, possession of the suit premises has been handed over by the Defendant to the Plaintiffs on or about 21st February, 2011.

11. Be that as it may, the Appellate Bench of the Small Causes Court, Bombay heard the Appeal filed by the Defendants and by its judgment and order dated 6th January, 2014 confirmed the order of the Trial Court and dismissed the Appeal filed by the Defendant. Being aggrieved by this order of the Appellate Bench, the Defendant is before me in the present Civil Revision Application.

12. In this factual background, Mr Ajay Khaire, learned counsel appearing on behalf of the Applicants (original Defendant) raised only one contention. He submitted that the Courts below have misdirected themselves in law by coming to the conclusion that the termination notice / notice to quit issued on behalf of the Plaintiffs was valid. He submitted that ex-facie the termination of the Defendants' tenancy was invalid by virtue of the fact that the notice

to quit was not addressed on behalf of all the trustees of the said Trust which is the owner and landlord of the suit premises. He brought to my attention the termination notice dated 3rd March, 2001 and submitted that on an ex-facie reading of this notice, it is clear that the same has been given only on behalf of the three trustees mentioned therein viz. Gangasingh Motisingh, Digvijaysingh Gangasingh, and Ishwarsingh Gangasingh. The name of the fourth trustee viz. Kishoresingh Gangasingh does not find place in this notice. He submitted that it is now well settled that even though one co-owner can file a suit for eviction of a tenant, the notice to quit / termination notice has to be issued on behalf of all the co-owners. He submitted that the trustees are akin to owners of the property and therefore all trustees ought to have given the notice to quit for it to be considered valid in law. In support of this proposition, Mr Khaire relied upon a decision of a Single Judge of the Delhi High Court in the case of **Sucharita Pradhan and others v/s U.P. Twiga Fibreglass Ltd. and others, reported in 2002 AIR (Delhi) 1**. Placing reliance on this decision Mr Khaire submitted that notice of termination of a tenancy given by only some of the co-owners is clearly held to be invalid and subsequent ratification is not sufficient to cure the defect. For all the aforesaid reasons, the learned counsel submitted that interference is called for with the

impugned orders in my limited jurisdiction under section 115 of the CPC.

13. On the other hand, Mr Zubin Behram Kamdin, learned counsel appearing on behalf of the Plaintiffs, submitted that in the facts of the present case, it is clear that the notice to quit was given on behalf of all the trustees. He submitted that the suit was filed by all the trustees who were Plaintiffs and merely because the name of the Mr Kishoresingh Gangasingh was not mentioned in the notice to quit / termination notice, the same would not make it invalid or bad-in-law. To elaborate this point further, Mr Zubin Behram Kamdin brought to my notice the averments in the plaint and more particularly paragraph 10 thereof which reads as follows :-

“10. The Plaintiffs by their Advocate's letter dated 30th March 2001 duly served upon the Defendants terminated their monthly tenancy and called upon the Defendants to hand over quiet, vacant and peaceful possession of the said premises upon expiration of the month expiring next after the month in which the said notice was received by the Defendants and the Plaintiffs asserted their right to re-enter upon the said premises in the name of the whole upon the Defendants failing to do so. Annexed hereto and marked Exhibit 'B' is the copy of the Plaintiff's Advocate's letter with acknowledgments.”

(emphasis supplied)

14. He submitted that paragraph 10 clearly states that the

Plaintiffs by their Advocate's letter dated 30th March, 2001 terminated the monthly tenancy of the Defendants. Kishoresingh Gangasingh is in fact Plaintiff No.4. This averment has been dealt with by the Defendants in paragraph 12 of its written statement wherein it is merely stated that the notice dated 30th March, 2001 is bad-in-law and does not validly terminate the tenancy of the Defendants. Mr Zubin Behram Kamdin submitted that this denial is as vague as it can be. He was at pains to point out that in paragraph 10 of the plaint, it was specifically averred that the monthly tenancy of the Defendants was terminated by all the Plaintiffs by their Advocate's letter dated 30th March, 2001. This fact has not been denied in the written statement. According to Mr Zubin Behram Kamdin, the submission made on behalf of the Defendants that the notice to quit was not given on behalf of all the trustees is not correct.

15. Without prejudice to the aforesaid argument, Mr Zubin Behram Kamdin submitted that in any event, even if that were the case, still, in the facts of the present case, the notice to quit could not be held to be invalid. He submitted that the Trust Deed dated 31st March 1949, and which was tendered across the bar for my perusal, clearly states that the trustees may manage the Trust's premises

and all the lands, tenements and hereditaments which shall for the time being held for the Trust. It further stipulates that all or any of the powers of the management of the said premises shall be exercised by the trustees who shall be for the time being managing the Trust's premises in accordance with the provisions of the Trust Deed. Thereafter, Mr Zubin Behram Kamdin pointed out that the Trust Deed itself sets out that Mr Gangasingh was appointed as a trustee to manage the Trust's premises (the suit premises) and also to supervise the new construction work as mentioned in clause 5(c)(i) of the Trust Deed. While pointing out this clause, Mr Zubin Behram Kamdin submitted that even if one peruses the Lease Deed executed in favour of the Defendants, the same was executed only by one trustee and viz. Mr Gangasingh and not by all the trustees of the said Trust. He submitted that admittedly the notice to quit the suit premises was addressed on behalf of the said Gangasingh along with two other trustees and this being the factual position, it could not be said that the notice to quit / termination notice was bad-in-law. In support of this argument, Mr Zubin Behram Kamdin relied upon the decision of the Supreme Court in the case of **J.P. Srivastava and Sons (P) Ltd. and others v/s Gwalior Sugar Co.Ltd. and others reported in (2005) 1 SCC 172**. Mr Behram Kamdin therefore submitted that there was no merit in the Civil Revision Application and the same

ought to be dismissed with costs.

16. I have heard the learned counsel for the parties at length and perused the papers and proceedings in the Civil Revision Application. I have also carefully gone through the orders passed by the Trial Court as well as the Appellate Bench of the Small Causes Court, Mumbai. As mentioned earlier, the only point canvassed before me is that the notice to quit / termination notice is invalid and therefore the suit filed by the Plaintiffs ought to have been dismissed. This argument is based on the basis that the termination notice dated 30th March, 2001 (page 25 of the paper-book) has been addressed only on behalf of the three trustees viz. Gangasingh Motisingh, Digvijaysingh Gangasingh, and Ishwarsingh Gangasingh. This notice has not been addressed on behalf of the fourth trustee viz. Kishoresingh Gangasingh. In this regard, I find considerable force in the arguments canvassed by Mr Zubin Behram Kamdin, learned counsel appearing on behalf of the Plaintiffs. Though it is true that this notice has been addressed on behalf of only three trustees (instead of four), one must not lose sight of the fact that the suit has been filed by all four trustees. The averments made in the plaint categorically state that the notice to quit dated 30th March, 2001 was addressed by the Advocates for the Plaintiffs (all) to the

Defendants terminating its tenancy. This averment has not been denied in the written statement. All that is stated in the written statement is that the notice dated 30th March 2001 is bad-in-law and it does not validly terminate the tenancy of the Defendants. In fact, on perusal of the written statement, nowhere has it been pleaded that the notice to quit is not valid and proper or has not validly terminated the tenancy of the Defendants on the ground that it has not been given on behalf of all the trustees. The written statement is completely silent on this aspect. In fact, in paragraph 1(b) of the written statement, the Defendant pleads that the notice to quit and the plaint do not disclose the particulars as to when the tenancy in respect of the suit premises commenced and in view of this, the notice to quit is not valid and therefore, the suit is liable to be dismissed.

17. This being the factual position, I find that the argument canvassed by Mr Zubin Behram Kamdin that the notice was in fact given on behalf of all the trustees is well founded. In this regard, the observations of the Supreme Court in the case of **J.P. Srivastava and Sons (P) Ltd.** (supra) are quite apposite. Paragraphs 24 to 29 of this decision read thus :-

“24. The issue then is — was it represented before CLB by Nini Srivastava? The answer to this would depend on whether the

trustees of the Trust could authorise one of them to initiate proceedings for and on behalf of the Trust. A Full Bench of the Gujarat High Court in Atmaram Ranchhodbhai v. Gulamhusein Gulam Mohiyaddin[AIR 1973 Guj 113 : 13 Guj LR 828 (FB)] said: (AIR p. 115, para 3)

“[W]hether the trust is a private trust governed by the Indian Trusts Act or is a public charitable or religious trust, a trustee cannot delegate any of his duties, functions and powers to a co-trustee or to any other person unless the instrument of trust so provides or the delegation is necessary or the beneficiaries competent to contract consent to the delegation or the delegation is in the regular course of business. These are the only four exceptional cases in which delegation is permissible and save in these exceptional cases, the trustees cannot, even by a unanimous resolution, authorise one of themselves to act as managing trustee for executing the duties, functions and powers relating to the trust and every one of them must join in the execution of such duties, functions and powers.”

25. The issue in that case was whether one co-trustee could determine a tenancy. The Court said he could not, but held: (AIR p. 116, para 8)

“But when we say that the tenancy must be determined by all co-trustees, we must make it clear that what we mean is that the decision to terminate the tenancy must be taken by all the co-trustees. The formal act of giving notice to quit pursuant to the decision taken by all the co-trustees may be performed by one co-trustee on behalf of the rest. The notice to quit given in such a case would be a notice given with the sanction and approval of all the co-trustees and would be clearly a notice given by all co-trustees.”

26. The view has been followed by the different High Courts (see for example Duli Chand v. Mahabir Pershad Trilok Chand Charitable Trust [AIR 1984 Del 145 : (1984) 25 DLT 70]) and held to be too narrow in Jain Swetambara Murthi Pujaka Samasthav. Waman Dattatreya Pukale [AIR 1979 Kant 111 : (1978) 2 Kant LJ 425] .

27. This Court in Shanti Vijay & Co. v. Princess Fatima Fouzia [(1979) 4 SCC 602 : AIR 1980 SC 17] held that: (SCC p. 612, para 26)

“ ‘... the act of one trustee done with the sanction and approval of a co-trustee may be regarded as the act of both. But such sanction or approval must be strictly proved.’ ”

28. It was also held that a trustee could act on behalf of others, if there is a clause in the trust deed authorising the execution of the trust to be carried out by “one or more or by majority of the trustees”.

29. Therefore although as a rule, trustees must execute the duties of their office jointly, this general principle is subject to the following exceptions when one trustee may act for all (1) where the trust deed allows the trusts to be executed by one or more or by a majority of trustees; (2) where there is express sanction or approval of the act by the co-trustees; (3) where the delegation of power is necessary; (4) where the beneficiaries competent to contract consent to the delegation; (5) where the delegation to a co-trustee is in the regular course of the business; (6) where the co-trustee merely gives effect to a decision taken by the trustees jointly.”

18. As can be seen from the aforesaid decision, the Supreme Court has clearly held that although as a rule the trustees must execute the duties and functions of their office jointly, this general principle is subject to exceptions as more particularly set out in paragraph 29. The first exception is when the Trust Deed allows the Trust to be executed by one or more or by a majority of trustees. The second exception is when there is an express sanction or approval of the act by the co-trustees. In the facts of the present case, considering that the suit has been filed by all the trustees and in which it has been specifically averred that the notice to quit was given on behalf of all, and which averment has not been denied in the written statement, this would clearly be a case where there is an express sanction or approval of the act by the Co-trustees as

contemplated in paragraph 29 of the decision of the Supreme Court. The fact that Mr Kishoresingh Gangasingh has joined in the suit as Plaintiff No.4 itself shows that he has granted his approval to the other co-trustees to terminate the tenancy of the Defendant.

19. Even otherwise, I find that the case in hand would clearly fall within the first exception carved out by the Supreme Court in paragraph 29 wherein the Supreme Court says that a single trustee or a majority of trustees can act on behalf of all, where the Trust Deed allows them to do so. In the facts of the present case, the Trust Deed is before me. Clauses 6, 7 and 10 of this Trust Deed read as under :-

“(6) The Trustees may manage the Trust Premises and all the lands tenements and hereditaments which shall for the time being be held upon the Trusts of these presents with all the powers in that behalf of absolute owners including power to erect, pull down, rebuild, add to and repair houses and buildings and to improve and develop all or any of the said premises and to insure against losses or damages by fire and to make allowances and arrangements with tenants and others; to condone and grant license to commit breaches of covenants accept surrenders of leases without being responsible for any loss or damage occasioned thereby. All or any of the powers of management hereinabove contained shall be exercised by the Trustee who shall be for the time being managing the Trust Premises in accordance with the provisions hereof.

(7) The Trustees or the Trustee who shall for the time being be managing the Trust Premises may demise all or any

of the lands tenements hereditaments and premises which shall for the time being be held upon the trusts of these presents, for any term of years either in possession or reversion and for any purpose with or without taking a fine or premium upon such terms and conditions including option to the lessee to renew in all respects as they or he shall think fit.

(10) The said Kunwar Gangasingh shall during his life time be bound to manage the Trust Premises and also supervise the new construction work mentioned in sub-clause (c)(i) of Clause (5) hereof while such construction work continues. After the death of Kunwar Gangasingh Kunwar Harnamsingh shall manage the Trust Premises, after he is appointed one of the trustees of these presents. After the death of Kunwar Harnamsingh or in the case of his refusing to become a trustee of these presents or to manage the Trust Premises the eldest great grandson of the Settlor being the son of Kunwar Gangasingh shall for the time being be the trustee of these presents shall manage the Trust Premises. The Trustees who shall for the time being manage the Trust Premises shall be entitled to receive from the net income of the Trust Premises Rupees 200/- (two hundred) as his remuneration for looking after and managing the Trust Premises in accordance with Clause (4) hereof. The Trustees who shall manage the Trust Premises for the time being shall be solely entitled to and be responsible and accountable to the exclusion of the other trustee or trustees, for collecting the rent and income of the Trust Premises and paying the outgoings in respect thereof and carrying out minor and recurring repairs to the Trust Premises and paying the same that become payable to the respective beneficiaries and supervising the keeping of accounts of the Trust Premises and getting accounts audited every year PROVIDED ALWAYS that in all matters requiring the exercise of discretion on the part of the Trustees all of them shall as far as possible got jointly and in consultation with each other and in the event of the Trustees not agreeing on any matter the same shall be referred to arbitration in accordance with the provisions of the Indian Arbitration Act.”

20. On a conjoint reading of these clauses, what is clear is that the Trust Premises viz. the suit premises and all other lands,

tenements, hereditaments which may be acquired by the Trust, can be managed by the trustee who is appointed in that behalf by the Trust. This Trust Deed clearly appoints Mr Gangasingh, during his life time, to manage the Trust Premises. It is not in dispute before me that the notice to quit / termination notice has been issued on behalf of the said Gangasingh who also was the only trustee who executed the Lease Deed in favour of the Defendant. This being the admitted factual position, I do not see how the notice to quit / termination notice can be said to be invalid in law because it has not been issued on behalf of all trustees. This would squarely fall within the exception carved out by the Supreme Court in paragraph 29 wherein it clearly lays down that a trustee may execute the duties of his office for and on behalf of all, where the Trust Deed so allows. I am therefore clearly of the view that the notice to quit / termination notice was clearly valid in law and the argument on behalf of the Defendant that the same is rendered invalid because the name of the fourth trustee viz. Kishorsingh Gangasingh did not find place in the termination notice is hereby rejected.

21. This now only leaves me only to deal with the decision of the Delhi High Court cited by Mr Khaire in the case of **Sucharita Pradhan (supra)**. I find that this judgment is wholly inapplicable to

the facts of the present case. The Delhi High Court has inter alia held that the determination of the tenancy has to be done by all co-owners and the ratification of the act of the Plaintiffs in serving a notice subsequently is of no avail. The Delhi High Court further held that the determination of the tenancy is to precede the filing of the suit. I fail to see how this decision is of any assistance to the Defendant. Firstly, the case before me is not that of co-owners but that of co-trustees. Though in law the trustees may be legal owners of the Trust property they hold the same in a fiduciary capacity and for the benefit of the beneficiaries. This certainly cannot be equated with co-owners as contemplated in the decision of the Delhi High Court. Secondly and more importantly, what is the status of a trustee and how they can act has been specifically set out by the Supreme Court in the case of **J.P. Srivastava and Sons (P) Ltd. (supra)** and which decision has been referred to by me earlier. I therefore fail to understand how this judgment of the Delhi High Court is applicable to the facts and circumstances of the present case.

22. For all the foregoing reasons, I find no merit in this Civil Revision Application. The same is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

23. In view of the dismissal of the Civil Revision Application, nothing survives in Civil Application No.346 of 2014 and the same is disposed of accordingly.

(B.P. COLABAWALLA, J.)